



ABBEY MEMORIAL ASSOCIATION



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**Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington DC 20580**

**"16 CFR Part 453"
Federal Trade Commission Funeral Rule Commentary
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Abbey Memorial Association was founded to provide creative, yet practical, solutions to persons facing the problems associated with everyday living and with human mortality. Abbey Memorial Association connects people – and their places of worship – with the goods and services they want and need, as well as, helping to better commemorate the special people, places and events in their lives. Abbey Memorial Association can help its membership by providing innovative alternatives through value-added products, services and information delivered through a Cycle of Care.

- **care to look, feel and live better during life,**
- **care to have fulfilling and meaningful services to honor life which has ended, and**
- **care to memorialize that life and to deal with the loss constructively.**

Abbey's founder, David W. Newcomer IV earned a Bachelor of Arts degree in psychology from the University of Kansas. He owned and operated funeral homes, cemeteries and crematories for 31 years, and also was president of a funeral prearrangement company and funeral reinsurance company. He is recognized as one of a handful of persons who has earned both the Certified Cemetery Executive and Certified Funeral Service Practitioner designations. After selling his interest in the funeral business, he continues to dedicated his working career to provide the finest service possible to his customers.

The following comments are offered in response to the request by the United States Federal Trade Commission (the "Commission") for comments regarding its Funeral Industry Practices Rule (the "Rule"). The following commentary is offered with respect to the specific questions raised on the Commission's Website regarding the Rule. The numbers shown below correspond to the specific questions set forth on the said Website. Comment is not offered with respect to each question.

(1) Is there a continuing need for the Funeral Rule?

- Yes

(a) What benefits, if any, has the Rule provided to purchasers of funeral goods and services?

- The Rule has, for the most part, required funeral homes to unbundle the poorly understood mixture of products and services that typically comprise funeral offerings. This permits consumers the opportunity to comparison shop and to select and pay for only the components of the funeral offerings he or she wants. Unbundling permits consumer shoppers to compare apples to apples and to select among and between full line funeral service/merchandise providers and providers offering only some of the components of a typical funeral offering.

Unbundling the merchandise from the services is probably the most helpful aspect of the rule. There are basically four fundamental aspects of the funeral experience--the emotional and/or spiritual aspect; the care for and custody of the remains; the purchase of merchandise; and the final resting place. The emotional aspect is significant in that the sense of loss and associated grief often clouds the reasoning process, opening the door to an almost endless variety of unsavory practices, only one of which is price gouging. By prohibiting the tying of the goods/services associated with each of these aspects, the consumer at least has the opportunity to shop for the best prices and value in each of these areas, as well as decline unwanted items within each area.

By requiring funeral homes to furnish prospective customers with an unbundled price list, consumers are empowered. Separating out the components of the funeral offering enables consumers to make a rational cost/benefit analysis of each of the funeral offering components, permitting them to decline expensive "extras." In addition, the unbundled price list facilitates competition among providers of non-licensed merchandise and services. State licensing processes, often in the hands of the "good old boys," empower certain persons who provide services subject to licensure; however, if the licensed providers are permitted to bundle their licensed services with unlicensed services and merchandise, they are permitted, as a class,

to extend their "market power" into unlicensed areas. With unbundled price lists, consumers at least have an opportunity to "choose" among the offerings of other providers. Choice, after all, is the key component in our market economy.

Abbey Memorial Association ("Abbey") and companies like it are able to save consumers on average 1/3 of the cost of a Funeral Provider by helping direct them to separate "nontraditional" providers. The emotional/spiritual aspect of the funeral process, through Abbey, is provided by Abbey Memorial Centers which, typically, are churches. Abbey Memorial Centers also offer a facility for memorial services. Abbey Memorial Association members are free to choose from among a selection of Abbey Memorial Centers and are also free to choose what merchandise, which embalming service, and what other goods and services (if any) to buy. Abbey Memorial Association collects funeral offering price data, furnishing the same to its members, to enable them to make the most effective choices.

(b) Has the rule imposed costs on purchasers?

- Before the Rule, most funeral directors priced all services with the type of casket selected. Consumers who selected caskets in the lower range, and had a "traditional funeral" would generally have lower prices than those found under itemization after the Rule. However, the market has reacted, and there are now "discount" or "cut-rate" funeral homes, which specifically cater to that market.

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to Purchasers?

- The Rule should provide for an Urn Price List. With the rise in cremation, urns are becoming nearly as prevalent as caskets.
- The Rule should provide that if a Funeral Provider advertises any price or prices, whether on a Web page or otherwise, the advertisement must either contain the entire Price List for the category of the item advertised or provide the consumer with notice that a price list will be furnished free of charge upon inquiry. This would make it much easier to comparison-shop. There is a wide divergence of prices, but it is time-consuming to compare prices, especially when one must copy the casket and urn prices manually on premises. Furthermore, at the time when funeral services and/or merchandise is needed, time is in short supply. The need for funeral services and/or merchandise is more immediate than is the case for virtually any other product and/or service that a typical consumer will purchase during his/her lifetime.
- The Rule should provide that e-mail or Web-based requests for a funeral provider's price lists should be honored in the same way as other more traditional requests.

- The Rule should be modified to require that a copy of the casket, vault and urn price lists be given to anyone who requests one. This should also be available to persons making a request.
- The Rule should be modified to require that funeral directors accept and handle urns, caskets, vaults, and other merchandise purchased by consumers from third-party sources, such as casket stores, in the same manner as they accept and handle them when the consumer has purchased the merchandise from the funeral director himself/herself or from the funeral service provider's regular suppliers. Funeral directors have refused to accept casket deliveries, actually damaged caskets supplied from casket stores, refused to provide racks on which to place third-party furnished caskets, imposed unreasonable requirements upon customers who choose caskets from a casket store (such as requiring the family members to be present at the time the casket is delivered), and have otherwise engaged in campaigns of "dirty tricks" to discourage outside casket sales. Such practices should be declared unfair or deceptive.
- The Rule should be modified to require a statement that prices listed on the General Price List and other price lists are negotiable, if that is the fact. Funeral Directors have thwarted the ability of consumers to feel confident they have obtained the best price from a funeral home, when a consumer has shopped and then comes or returns to a funeral home that claims it will match any price obtained elsewhere. Consumers who are unaware of this flexible pricing, will be paying more than necessary if they do not bargain. As an alternative, quoting prices other than those listed on the General Price List and other price lists should be a deceptive practice.
- The Rule should be modified to require that manufacturers of caskets and urns sell to resellers and retailers on terms that are proportionately equal to those applicable to their historic customers, funeral homes. Many manufacturers currently sell only to funeral homes. This tacit arrangement restricts competition in the sale of caskets, urns, and vaults to consumers in that this restriction on supply limits consumer choice, artificially restricts the alternative market channels available to consumers, makes it difficult for alternate suppliers of such merchandise to compete.

(a) How would these changes affect the costs the Rule imposes on the funeral providers subject to its requirements?

- The costs would be minimal. With respect to the mailing of price lists, the Funeral Provider should be permitted to charge a reasonable fee for postage and copying, if the list is mailed.

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

- The Internet has made it easier and less costly to provide information on prices. If unbundled information is available from funeral service/merchandise providers, the Internet would also make comparison shopping easier.
- (10) How, if at all, has the Rule affected the relative number of consumers who contact more than one funeral home before deciding which one to choose?
- The Rule has made it possible for consumers to seek the best value for each of the four aspects of the funeral. Casket stores that can acquire quality merchandise and sell it more efficiently (resulting in lower prices to consumers) are beginning to have an impact on the market. Many of those who use a casket store have done so after first visiting a funeral home. Eliminating the Rule would cripple or destroy this emerging market segment.
 - The main problem is the difficulty in getting price information on merchandise. So-called discount funeral homes advertise low service prices, but may charge more for merchandise. Because Funeral Providers are not required to give out merchandise price lists for retention, it takes a determined consumer, who is willing to hand copy prices, for merchandise to find the best value.
- (11) How, if at all, has the Rule benefitted consumers by:
- (a) Alerting consumers to the importance of price information and ensuring that they obtain information at the critical point of choosing a provider?
 - The Rule has been helpful. It has permitted newspapers and others who distribute information to compile and publish comparative prices to help inform consumers about the wide variance in prices.
 - (b) Providing information about different purchase options?
 - The Rule is helpful. It permits the consumer to know that there are alternative services to a full traditional funeral. It also makes it easier for a consumer to select aspects of the funeral from other nontraditional providers.
 - (c) Protecting consumers from injurious misrepresentations?
 - The Rule is helpful in preventing misrepresentations.
 - (d) Requiring authorization prior to embalming?
 - The Rule has helped lower costs for those who want direct cremation without embalming. Unbundling the services fee is helpful.
 - (e) Prohibiting providers from conditioning the purchase of a wanted item on the purchase of an unwanted item?
 - The Rule has made it possible for casket stores and other nontraditional providers to compete. If the Rule were not in place, licensed funeral homes could (as before) extend their leverage beyond the licensed service to the market for ancillary

merchandise. This would permit such funeral homes to add excessive costs and handling fees and make outside merchandise more costly to consumers.

- (14) How, if at all, since the Rule was amended in 1994, have the following factors changed?
- (a) The number, size, and type of providers of funeral goods and services in the industry?
 - The industry continues to become more and more dominated by large conglomerates. They are concentrating on combination operations. The number of discount or cut-rate funeral providers is on the increase. These operations offer reduced facilities and service hours and lower prices for services. Additional crematories are also being built.
 - (b) The ability of new providers, both traditional and nontraditional, to enter the industry?
 - Casket stores are now becoming more viable after the elimination of the handling fee. They are still being hampered by the lack of cooperation on the part of manufacturers to supply them with product or to support them in the way they support funeral directors.
 - (c) What types of nontraditional entrants have appeared in the industry, and how are they different from traditional providers?
 - Internet providers of caskets and urns are now in business. The facilities and location of these providers may not be known.
- (16) To what extent are providers of funeral goods and services complying with the Rule overall, and with each of its component requirements?
- According to the Commission's own information, each time an investigatory sweep is undertaken, violations are uncovered.
- (22) Should the Commission expand the definition of "funeral provider" in order to bring nontraditional members of the funeral industry within the scope of the Funeral Rule's coverage? Are consumers being harmed by the current limitation on the scope of the Rule's coverage?
- Expansion of the definition of "funeral provider" to cover nontraditional providers who sell only merchandise or services (but not both) would be inappropriate. There is no data to support treatment, for example, of casket stores any differently from sellers of merchandise generally. Nontraditional providers, such as casket stores, have no leverage to extend into other markets. There is, however, one area of growing concern where an expanded definition of "funeral provider" may be appropriate. So-called "combos" (a mortuary or mortuaries under common ownership or management with a cemetery in the same market area) have the ability and the incentive

to bundle prices, overcharge consumers, and engage in the same kinds of deceptive practices that the Rule was intended to stop.

- (28) Should the requirement for a General Price List be modified? If so, how?
- (a) Are there any new fees, prices, goods, or services which should be added to the General Price List requirements?
- A casket handling fee should be included as a separate mandated line item in the General Price List. By specifically identifying the charge, the Commission would eliminate the distinction between a fee and a discount, and the apparent loophole some have sought to employ to avoid the Rule. Of course, the handling fee would need to be the same, whether or not the casket is purchased from the funeral service provider or another source. If handling a casket is a separately recognized service for which funeral directors may charge a fee, then funeral directors would be legally responsible for the caskets they handle. This should reduce the incentive of funeral directors to pull "dirty tricks" by deliberately damaging third-party supplied caskets. Recognizing a handling fee as a legitimate charge will not drive up funeral costs. First, by requiring disclosure of the amount of the charge, consumers will be able to comparison shop. Second, unreasonable charges will be counterproductive for funeral directors since overcharging would just drive consumers to choose alternative forms of disposition that do not require a casket, such as cremation.